

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY JK D.C.
05 SEP -8 PM 3:01

MARTINO TAYLOR,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC.,

Defendant.

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THOMAS M. COULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

No. 04-02722BV

ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Before the court is the motion of the defendant, United Parcel Service, Inc. ("UPS") , for a protective order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, quashing a notice to take the deposition of Walt Dickson in Memphis, Tennessee. As grounds for the motion, among others, UPS states that Dickson is a resident of South Carolina and is employed at the UPS facility in South Carolina, and it would create undue hardship and expense for him to travel to Memphis for his deposition. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is granted.

This is a race discrimination and retaliation case. The plaintiff alleges that UPS discriminated against him between May 2003 and November 2003 when Walt Dickson and other managers refused to allow him to work a position he successfully bid on, reduced his

pay inappropriately, and retaliated against him after he filed a grievance. At the time of the incidents in question, Walt Dickson was employed as Labor Manager for UPS at its Midsouth District office in Little Rock, Arkansas. He was transferred to the South Carolina district office as Labor Manager in November of 2004, and he currently resides there and works there. The plaintiff insists, nevertheless, that Dickson should be deposed in Memphis, Tennessee.

There is a presumption that a defendant should normally be allowed to have his or her deposition taken where he or she resides or works. *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1971); *Rapoca Energy Co. v. AMCI Export Corp.*, 199 F.R.D. 191, 193 (W.D. Va. 2001); *Turner v. Prudential Ins. Co. of America*, 119 F.R.D. 381, 383 (M.D.N.C. 1988). The deposition of a corporate defendant through its agents and officers should normally be taken in the district of the corporation's principal place of business. *Rapoca*, at 193; *Turner*, at 383. There is a distinction, however, between the deposition of a corporation through its agents and officers, and the deposition of an employee of a corporation who is a fact witness. *Id.* Depositions of nonparty witnesses are to be taken within 100 miles of where they reside or do business. FED. R. CIV. P. 45(c)(3)(A)(ii).

The deposition sought by the plaintiff is not a 30(b)(6) deposition of a corporate defendant. Rather, the plaintiff seeks

to depose Walt Dickson, a nonparty who is an employee of the defendant, as a fact witness. The mere fact that the occurrences giving rise to the lawsuit occurred in Memphis, Tennessee, is not sufficient to overcome the presumption that the witness should be deposed where he resides or works.

Accordingly, the deposition of Walt Dickson noticed for Memphis, Tennessee, on August 17, 2005, is hereby quashed. In the interests of justice, the court grants the plaintiff permission to depose Walt Dickson by phone or by video conference if the plaintiff so desires.

IT IS SO ORDERED this ^{7th} ~~1st~~ day of September, 2005.



DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 40 in case 2:04-CV-02722 was distributed by fax, mail, or direct printing on September 8, 2005 to the parties listed.

Bradley W. Eskins
ESKINS KING, PC
50 N. Front St.
Ste. 1170
Memphis, TN 38103

James E. King
ESKINS KING, PC
50 N. Front St.
Ste. 1170
Memphis, TN 38103

Brian A. Lapps
WALLER LANSDEN DORTCH & DAVIS
511 Union St.
Ste. 2700
Nashville, TN 37219--896

James William Jefferson Farrar
WALLER LANSDEN DORTCH & DAVIS
511 Union St.
Ste. 2700
Nashville, TN 37219--896

Martino D. Taylor
4343 Springwind Road
Memphis, TN 38141

Honorable J. Breen
US DISTRICT COURT